



September 4, 2024

To: Cannon Beach City Council
Robert St. Clair, City Planner

Re: APP 24-05: Appeal by Miller Nash LLP of Planning Commission's Denial of CU 24-01, Requesting a Conditional Use Permit for the Purpose of Replacing the Deteriorating Beachfront Protective Structure

We are writing today to submit comments in support of the Planning Commission's decision below on CU 24-01, denying the request to replace a riprap revetment structure at the Stephanie Inn. The Planning Commission correctly interpreted the City's code to require denial of this permit, which will impermissibly impede public beach access and is not necessary for the property's protection.

Oregon Shores and Surfrider Foundation are non-profit organizations with a shared interest in protecting the shoreline and the public's access to it. Both organizations also represent the shared interests of their many members who are residents of Cannon Beach. Riprap revetments, like the one proposed, threaten significant harm to the public beach and coastal environment. For this reason, the City of Cannon Beach has strict regulations for these structures in its Municipal Code. The City's code only allows riprap revetments as a last resort solution in extreme circumstances where they will not impermissibly harm public beach access, and "[t]he burden is upon the applicant to demonstrate that these requirements can be met."¹

The applicant has failed to meet its burden here for the many reasons identified by the Planning Commission. We write to highlight two of those reasons: 1) the proposed structure will impermissibly impede public beach access and generate costs to the public, violating CBMC § 17.86.210(E); and 2) the applicant has not established that there are no less harmful alternatives to the proposed structure, violating CBMC § 17.86.210(D) & (I). For these reasons, the City Council must affirm the Planning Commission's decision and deny this permit.

I. **CBMC § 17.86.210(E): The Proposed Structure Will Impermissibly Impede Public Beach Access and Impose Long-Term and Recurring Costs to the Public**

CBMC § 17.86.210(E) only allows structural shoreline stabilization where the applicant demonstrates compliance with six factors, including that "[a]ccess to the beach is maintained" and "[l]ong term or recurring costs to the public are avoided." Here, the application does not meet either of these factors.

¹ CBMC § 17.86.020(A).

The installation of the proposed riprap revetment will hasten the erosion of the beach, lowering its elevation, and reducing the area available for public recreation. There is little controversy that beachfront protection structures adversely impact the beaches, bluffs, and dunes upon which they are built. The authors of Statewide Land Use Goal 18, which the CBMC implements through its shoreline structure regulations, knew this, expressly stating that the purpose of the policy

[i]s to limit long term, cumulative impacts from shoreline hardening, such as scouring and lowering of the beach profile, that can over time result in the loss of the dry sand public beach. . . . New development must instead account for shoreline erosion through non-structural approaches (e.g., increased setbacks). In the face of increased ocean erosion occurring in conjunction with climate change and sea level rise, limiting hard structures and allowing natural shoreline migration is a critical policy tool for conserving and maintaining Oregon's ocean beaches.²

Shoreline hardening not only “reduces abundance and diversity of marine habitats and associated fauna” but also “exacerbates erosion and prevents upslope transgression of coastal habitats with sea level rise.” This is true because:

The ability of beaches to retreat landward and build seaward in response to changes in sea level, storm waves, and other natural processes is fundamental to their protective role as well as to their continued existence. Shoreline hardening to thwart nature's ebb and flow is therefore the antithesis of beach conservation.³

Eventually, the effect of shoreline structures in worsening erosion and preventing upslope movements of the beach leads to complete destruction of the beach.⁴

Given the increases in storm surge and wave height we are already experiencing on the Oregon Coast, and given what we know of further predicted changes on the coast resulting from long-term climate change and cyclical climatic events such as those that take place during ENSO El Niño (increasingly even during La Niña) cycles, the harmful impacts of these structure to the public beach will only continue to grow. We have included pictures below as attachments of instances where rising sea levels have already led to riprap revetments that completely eliminate the beach at high tides.

In order to approve this application, the City must find that the applicant demonstrates that “access to the beach is maintained” and “[l]ong term or recurring costs to the public are avoided.”⁵ It cannot make that finding here because, in the long term, access to the beach will not be maintained and costs to the public cannot be avoided. Rising sea levels will push towards the structure and cause the beach in front of and around it to erode at a more rapid pace, until eventually the beach is gone. Even in the near term, the structure

² Edward J. Sullivan, *Shorelands Protection in Oregon*, 33 J. Env'tl. Law & Litigation 129, 150 (2018) (citing Matt Spangler, Senior Coastal Policy Analyst, DLCD)

³ Pillkey, Orrin H., quoted in Duke Research, 60 (1992).

⁴ Cornelia Dean, *Against the Tide: The Battle for America's Beaches*, 53 (2001).

⁵ CBMC § 17.86.210(E) (emphasis added).

will start to limit the public's access to the beach by restricting the ability to move past the structure at high tides.

The application itself acknowledges the impacts of climate change as a justification for the replacement structure.⁶ However, the application does not assess what impact the rising sea levels it cites to will have on the health of the beach and public beach access in tandem with its proposed structure. Without considering these questions, the applicant has not demonstrated compliance with CBMC § 17.86.210(E) and the City must uphold their denial of the application.

II. CBMC § 17.86.210(D) and (I): The Applicant Has Not Established that the Proposed Structure is the “Minimum Necessary” for Protection and that There are No Less Harmful Alternatives

CBMC § 17.86.210(I) limits shoreline protection structures to “the minimum necessary to provide the level of protection required.” Likewise, CBMC § 17.86.210(D) establishes a preference order for shoreline stabilization methods, with vegetated riprap being allowed only after less-harmful methods have been proven infeasible. Because the application only includes cursory conjecture about the viability of alternatives, from a company with a conflicted interest in building the structure, the applicant has not met its burden to demonstrate compliance with these provisions.

For each possible alternative identified in the report included with the application there are a few sentences that broadly dismiss the viability of alternatives, generally without citing to any evidence to support it. For example, the application concludes that vegetative stabilization is not feasible because the sand burritos installed at a different property on the beach have “split open and their contents are washing out.” However, the applicant does not establish that such an occurrence is actually “failing” nor does the applicant address whether any issues with that installation could be remedied by a different design or proper maintenance. This lack of analysis is particularly notable here, where the applicants existing riprap revetment has failed, making clear that none of these solutions are perfect. The application's consideration of vegetation stabilization, dynamic structures, and relocation of the building suffer from the same flaws and lack of actual evidence.⁷

Together, CBMC § 17.86.210(I) and (D) require the applicant to demonstrate that less-harmful alternatives to the structure are not possible. Nowhere do the regulations include consideration of cost or maintenance requirements. The application fails to demonstrate compliance with these

⁶ Narrative Statement: Application for Conditional Use Approval of Beachfront Protective Structure, 7 (May 10, 2024), included in June 27, 2024 City of Cannon Beach Planning Commission Packet as Exhibit A-2 to CU 24-01 Staff Report.

⁷ Further, for beach nourishment, the report states that it can “significantly alter wave patterns along the beach,” and that “beach nourishment may need to be repeated every year.” However, the application does not reckon with whether beach nourishment would alter wave patterns more significantly than the proposed structure will, which is doubtful. Nor does the application consider the fact that riprap revetments also require maintenance.

provisions because it does not include any conclusive evidence that less-harmful solutions are not possible.

III. Conclusion

The applicant's attorney suggested before the Planning Commission that comments from the public and "non-experts" should be broadly disregarded by the Planning Commission.⁸ This statement plainly contradicts Oregon's strong principle of public participation in the land use process, emphasized by Statewide Land Use Goal 1. It is also simply not true that the comments the applicant was referring to do not represent valuable expertise.

For the purposes of this comment, we note that Oregon Shores and Surfrider have been working on issues of shoreline armoring along the Oregon Coast for decades. Time and time again, we have seen applications like this one that make broad, mostly unsupported, claims from the "experts" with a financial interest in building the structures about the viability of less-impactful alternatives and the impacts the structures will have. And we have seen firsthand, as have many of the community members and other organizations that commented, the harm these structures can cause to public beach access and the coastal environment.

The City Council should deny the application for replacing the riprap revetment at Stephanie Inn because it will harm public beach access. Additionally, despite that harm, the applicant did little to meet its obligation to contemplate alternatives or approaches that could minimize harm.

Sincerely,

Kaia Hazard, Oregon Regional Manager
Surfrider Foundation

Phillip Johnson, Shoreline and Land Use Manager
Oregon Shores Conservation Coalition

⁸ July 15, 2024 Letter from Miller Nash LLP, included in July 25, 2024 City of Cannon Beach Planning Commission Packet as Exhibit A-11 to CU-24-01 Staff Report.

Attachment A: Photos Demonstrating How Riprap Structures Obstruct Shoreline Access









